CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.	U.S.	
Hena Zaman		Team # 2	200511398	V	Abuse		O.L.	☐ Injury	
Incident Date(s)		Location of Incident:		P	recinct:	18	Mo. SOL	EO SOL	
Friday, 09/23/2005 9:00 PM		§ 87(2)(b)			101	3,	/23/2007	3/23/2007	
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCF	RB	
Sat, 09/24/2005 10:50 AM		Precinct Phone			Mon, 09/26/2005 10:21 AM				
Complainant/Victim	Туре	Home Addre	ess					_	
Witness(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
 SGT Carlos Fabara Officers 	01279	922317	101 PCT						
Witness Officer(s)	Shield N	o Tax No	Cmd Name						
1. POM John Florio	29396	930165	101 PCT						
2. POM Eric Konoski	26428	930497	101 PCT						
3. POM Raymond Rusielewicz	24008	934140	101 PCT						
4. POM Nicklas Cortes	27099	933714	101 PCT						
Officer(s)	Allegation	on			Inve	stiga	ator Recon	nmendation	
A.SGT Carlos Fabara	Abuse: S	Abuse: Sergeant Carlos Fabara supervised the entry of \$87(2)							
B.SGT Carlos Fabara		Abuse: Sergeant Carlos Fabara damaged sproperty.							
C. Officers	Abuse: Officers drew his/her gun.								
D.SGT Carlos Fabara		Abuse: Sergeant Carlos Fabara stopped and questioned unidentified males.							
E.SGT Carlos Fabara	Abuse: S	Abuse: Sergeant Carlos Fabara frisked unidentified males.							

Synopsis

On September 23, 2005, \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ and \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ and \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ and \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ and \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ so ther son, \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ was in her bedroom when she heard someone banging on her rear door, which is adjacent to the kitchen. Suddenly, \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ saw 2-3 male police officers run straight through her apartment (allegation A) and out the front door and they had damaged her back door in the process (allegation B). \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ stated that two male officers in uniform had their guns drawn (allegation C) when they initially entered through the rear door. \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ went outside and spoke with Sergeant Carlos Fabara, who identified himself as the officer in charge and provided his name to her upon her request. Sgt. Fabara informed \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ that the officers were looking for someone with a gun. \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ stated that Sgt. Fabara questioned and frisked (allegations D and E) two males, \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ and \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ who were standing in front of \$\frac{\mathbb{S}}{2}(2)(\mathbb{D})\$ stated that several officers responded to the location but no arrests were made.
Summary of Complaint
was interviewed at the CCRB on October 12, 2005 (enc.6a-e). \$87(2)(b) stated that on September 23, 2005 at approximately 9:00PM, she was in her house located at \$87(2)(b) Her older son, \$87(2)(b) was outside with fifteen of his friends (\$87(2)(b) were the only names she was able to provide) while her younger son, \$87(2)(c) was upstairs with his friends. \$87(2)(b) heard two bangs on her back door while her boyfriend, \$87(2)(c) was in the kitchen (which is adjacent to the backdoor) with his friends \$87(2)(b) says in the kitchen (which is adjacent to the backdoor) with his friends \$87(2)(b) heard more bangs and when she walked towards her back door, she saw 2-3 male police officers in uniform run straight through her house and exit through the front door, which was wide open at the time.
that the officers entered the house with their flashlights and guns drawn, but \$87(2)(b) and his friends. \$87(2)(b) went outside with \$97(2) noticed a marked RMP (#1917) parked in her driveway and asked several officers what was going on but did not receive a direct response. \$87(2)(b) then instructed \$87(2)(b) to get her lawyer's number and she asked Sergeant Carlos Fabara (who identified himself to \$87(2)(b) by name and shield# and as the officer in charge) what was going on. Sgt. Fabara told \$97(2)(b) that they observed a man with a gun going towards her backyard and they entered the home for her own protection because "anything could have happened." \$87(2)(b) went inside and noticed that the hinges on her door were damaged. \$87(2)(b) saw several uniformed officers in her backyard at this time. \$87(2)(b) described these officers as Hispanic/White males in uniform but was unable to give further descriptions because she was "too distraught." \$87(2)(b) also observed three to four marked vehicles as well as a black unmarked vehicle which Sgt. Fabara was utilizing. \$97(2)(b) did not witness the officers interact with any civilians nor did she see the officers make any arrests. The officers were at the scene for approximately 10-15 minutes. \$97(2)(b) was never asked for her identification and stated that no one left or entered her home through the backdoor prior to the officers entering.
\$87(2)(b) (enc.7a-c) \$87(2)(b) was interviewed at \$87(2)(b) on December 28, 2005. \$87(2)(b) stated that on September 23, 2005, at approximately 9:00PM, he was watching TV in his living room (next to the fron door) with an individual who no longer resides with him, \$87(2) \$87(2)(b) heard someone bang on the back door twice while \$87(2)(b) was in her bedroom and \$87(2)(b) was in the kitchen. All of a sudden

three plainclothes officers, PO1, PO2, PO3, (identified as Sgt. Fabara, PO Konoski and PO Florio during the CCRB investigation) who all had their handguns pointed towards the floor, entered the apartment, ran straight towards the front door, unlocked it and then ran out. Once outside, PO1, who later identified himself as Sergeant Fabara and as the officer in charge, asked two individuals from the neighborhood, Robert Brown and Omar for their identification, which they furnished. [87(2)(b)] did not see Sgt. Fabara write anything down. Sgt. Fabara then frisked [87(2)(b)] and [87(2)(c)] PO4 (male hispanic in uniform) and PO5 (male white in uniform) were situated at the backdoor and explained that the officers came inside the apartment because they saw a man with a gun. The officers never gave a description of who they were looking for. [87(2)(b)] denied that anyone ran into his home.

At this point, \$87(2)(b) came outside and asked the officers what was going on. She asked Sgt. Fabara for his name and badge number, which he promptly provided to her. \$87(2)(b) did not interact with the officers and added that they did not make any arrests or issue summonses. \$87(2)(b) noticed a black Impala outside which was utilized by Sgt. Fabara and his partners. There was also a marked patrol car. The officers were outside for 10-15 minutes. \$87(2)(b) explained that the backdoor was "somewhat" damaged and the lock fell out of place.

was interviewed at \$37(2)(b) on December 28, 2005 \$37(2)(b) stated that on September 23, 2005 at approximately 9:00PM, he was upstairs in his room when he heard two bangs at his back door. At this point \$37(2)(b) and his friend \$37(2) who no longer lives with them, were downstairs. When \$37(2)(b) went outside, he saw his mother speaking to PO1. \$37(2)(b) asked PO1 for his name, which he provided and added that he was the officer in charge. \$37(2)(b) was also outside with his friends but \$37(2)(b) did not know their names. \$37(2)(b) did not see any uniformed police officers or marked patrol cars but did see a black Impala was parked in the alleyway towards the left side of the house. \$37(2)(b) did not observe the officers interacting with anyone else at the location. PO2 and PO3, who were also in plainclothes, were at the location as well.

(enc. 9a-c) was interviewed at § 87(2)(b) on December 28, 2005. § 87(2)(b) stated that on September 23, 2005 at approximately 9:00PM, he saw a few male individuals (no further info) from the neighborhood standing in front of his apartment, talking loudly. At this point, \$87(2)(b) was unaware that officers were in the area. When \$87(2)(b) went into the kitchen, which is where the back door is located, he heard someone bang on the back door twice. Two uniformed officers, PO1 and PO2, entered the kitchen and when §37(2)(b) asked PO1, who had his gun pointed to the floor, why they entered his home, PO1 replied that they saw someone with a gun run into his house. § 87(2)(b) denied this and said that the door was locked therefore no one could have gained access into the home. The officers then ran outside through the house to the front door, which was wide open at this time. While standing by the back door, which leads to the parking lot, § 37(2)(b) saw PO1 and PO2 run towards the back alley but § 87(2)(b) was unable to see who, if anyone, the officers were chasing. PO3, who identified himself as the sergeant, advised to keep his door locked. The Sgt. explained that the officers were just trying to do their job and were chasing someone who was wearing a white undershirt and jeans-no further info provided. The officers were at the location for 15 minutes and no arrests were made. §37(2)(b) added that the frame of the back door fell out of place as a result of the entry.

Results of Investigation

PO Raymond Rusielewicz (enc. 11a-b)and PO Nicklas Cortes (enc.13a-c)

PO Raymond Rusielewicz was interviewed at the CCRB on March 31, 2006. On September 23, 2005, PO Rusielewicz worked in uniform from 4:00PM to 12:35AM with PO Cortes. PO Rusielewicz was assigned to Spike Patrol overtime in a marked RMP but could not recall the vehicle number. The following is PO Rusielewicz's memo book entry: "2108- foot pursuit male with a gun @ the rear of \$87(2)(b)

Seen BLK male approximately 5'6", white shirt, blue jeans with a black handled gun in front waistband run into back door of \$87(2)(b)

Gained entry by force in hot pursuit along with anti-crime team. Supervisor on scene (Sgt. Fabara). Upon entry same blk male ran out of front door of \$87(2)(b) to unknown direction."

PO Niklas Cortes was interviewed at the CCRB on April 12, 2006. On September 23, 2005, PO Cortes worked in uniform from 4:00PM to 12:30AM with PO Rusielewicz. PO Cortes was assigned to impact patrol and utilized a marked RMP but could not recall the vehicle number. The following is PO Cortes' memo book entry: "2108 male w/ a gun at rear of S87(2)(5) Description white t-shirt blue jeans. Male held black handle gun to his waistband. Gained entry by force in hot pursuit along w/ anti crime supervisor on scene Sgt. Fabara. Upon entry, said black male gone in unknown direction."

The following is PO Rusielewicz's and PO Cortes' combined CCRB statement.

By this time, all of the officers exited the vehicle and PO Rusielewicz informed the anti-crime team that they were looking for a male with a gun who ran into the location. The officers approached the door and realized that it was locked so they all kicked it open but PO Rusielewicz and PO Cortes could not affirm who entered the location first. PO Rusielewicz said that the door jam was damaged as a result of the entry. PO Rusielewicz and PO Cortes did not have their guns drawn and added that the anti-crime team did not have their guns out either.

Once the officers gained entry, PO Rusielewicz and PO Cortes caught a glimpse of the suspect who then ran out the front door. At this point, PO Rusielewicz put over a radio transmission and stayed at the rear of the location with PO Cortes while the anti-crime team ran out through the front door, which was already open. At some point, a female tenant asked the officers what was going on. PO Rusielewicz and PO Cortes also saw an older male in the apartment but he did not fit the description of the suspect. PO Rusielewicz and PO Cortes did not speak to any civilians but Sgt. Fabara did speak with the female tenant and explained the situation to her. PO Rusielewicz and PO Cortes did not know what happened once the officers exited through the front door but later found out that the suspect ran to an unknown location and was not apprehended. PO Rusielewicz and PO Cortes did not see any civilians standing outside and at no point did they question or frisk anyone. PO Rusielewicz and PO Cortes did not know if any of the officers questioned or frisked anyone in connection with this incident. PO Cortes searched the immediate area around the dumpsters for any type of evidence but did not retrieve anything. Numerous officers responded to the location once the transmission was put through at which point residents from the neighborhood came outside. PO Rusielewicz was instructed by Sgt. Fabara to prepare a city involved report in connection with this incident and did so once he went back to the stationhouse. PO Cortes and PO Rusielewicz were at the location for approximately 30 minutes.

Sergeant Carlos Fabara (enc. 15a-b)

Sgt. Carlos Fabara was interviewed at the CCRB on March 14, 2006. On September 23, 2005, Sgt. Fabara worked from 5:26PM to 2:10AM and was the anti-crime supervisor. Sgt. Fabara was working in plainclothes with PO Florio and PO Konoski and was assigned to an unmarked vehicle. The following is Sgt. Fabara's memo book entry: "2122- 10-85 RMP 1917 requests re pursuit w/gun into \$87(2)(b)

Sgt. Fabara stated that on September 23, 2005, at approximately 9:22PM, he was stopped at a red light when RMP 1917 pulled up alongside them and informed the officers that they were in hot pursuit, looking for a male with a gun. Sgt. Fabara recalled one officer from the RMP, PO Rusielewicz, but could not recall who his partner was. Sgt. Fabara followed the officers around the corner to the rear of \$87(2)(b)

Sgt. Fabara asked PO Rusielewicz and his partner if they were sure of the location and if they saw the gun. The officers informed Sgt. Fabara that they did observe a male with a gun run into \$87(2)(b)

The officers eventually kicked the door open. Sgt. Fabara could not recall which officers entered the location but established that he did. Sgt. Fabara could not specifically remember whether he or the other officers had their guns drawn but added that it would have been logical to have one out.

Once inside the location, Sgt. Fabara saw that the front door was wide open and assumed that the suspect, whom he never saw, ran out of the front door which lead to \$87(2)(b). Sgt. Fabara did not obtain a description of the suspect and was just going on the basis of what PO Rusielewicz and his partner observed. The officers followed the same path and exited through the front door. The officers lost sight of the suspect at which point a radio transmission was put through. Sgt. Fabara could not recall if any civilians were standing outside the location but did recall that he observed occupants in the apartment. One of the tenants, came outside during the incident and began to yell and scream. Sgt. Fabara introduced himself as the officer in charge and explained the situation to her. \$87(2)(b) never denied that anybody ran through her house with a gun but was upset that her door was damaged. Sgt. Fabara informed that a city involved accident report would be prepared in connection with this incident. \$87(2)(b) asked Sgt. Fabara for his name, which he then provided. Sgt. Fabara said that there was minimal damage to the door but it was still functional. No arrests were made and summonses were not issued to anyone. Sgt. Fabara established that besides speaking with \$37(2)(b) he did not interact with any other civilians and did not frisk or search anyone. Sgt. Fabara did not know if any other officer questioned or frisked anyone. Sgt. Fabara was unable to recall if additional officers responded to the location.

PO John Florio (enc, 17a-b)

PO Florio was interviewed at the CCRB on March 14, 2006. On September 23, 2005, PO Florio was assigned to the anti-crime with Sgt. Fabara and PO Konoski from 5:30PM to 2:05AM. PO Florio worked in plainclothes and was assigned to a black unmarked Impala. The following is PO Florio's memo book entry: "2122: RMP 1917 foot pursuit for man w/ gun into \$37(2)(5) Backing on job."

PO Florio stated that on September 23, 2005, he and his partners were at a traffic light when they were flagged down by RMP 1917. PO Rusielewicz informed the officers that a suspect with a gun had entered PO Florio stated that PO Rusielewicz was with another officer but he could not recall his name. PO Rusielewicz did provide a description of the suspect but PO Florio was unable to recall the details of the description. At this point the officers followed the RMP to the rear of \$87(2)(b) driving down the left alleyway. PO Florio did not see the suspect or any other civilians standing outside. The officers jumped out of the vehicle and PO Florio kicked in the rear door, which was locked. PO Florio does not recall who entered the location first but affirmed that he was the officer who kicked the door once to gain entry. PO Florio did not recall if he or the other officers had their guns drawn. All five officers ran into the apartment and saw the suspect run out through the front door (which was wide open), out onto the street. PO Florio did notice a few occupants inside but did not remember their descriptions because he was still in hot pursuit. The officers ran straight through the apartment and exited through the same front door but PO Florio could not confirm if all of the officers ran out with him. PO Florio explained that he was only inside the location for five seconds and did not interact with anyone. There were numerous people standing outside and he quickly asked them where the suspect had ran but could not give further details of the interaction because there was so much going on at that point. At some point, PO Rusielewicz called for assistance but PO Florio did not recall which officers responded. PO Florio stated that the officers were unable to apprehend the suspect and lost sight of him once they reached the front of the house. PO Florio stated that he did not interact with anyone who was standing outside. PO Florio did not ask anyone for their ID and did not frisk or search anyone. PO Florio stated that he did not recall if any other officer questioned or searched/frisked anyone standing outside. PO Florio stated that there were no arrests made or summonses issued. Sgt. Fabara went into the location to speak with a female occupant but PO Florio and PO Konoski went back to their vehicle and did not witness the interaction. PO Florio acknowledged that the door was damaged.

PO Eric Konoski (enc. 18a-b)

PO Eric Konoski was interviewed at the CCRB on March 30, 2006. On September 23, 2005, PO Konoski worked in plainclothes from 5:30PM to 2:05AM with Sgt. Fabara and PO Florio. PO Konoski was assigned to anti-crime and was utilizing a black unmarked vehicle. PO Konoski did not have his memo book at the time of his CCRB interview.

PO Konoski stated that on September 23, 2005, he and his partners were stopped at a red light when two officers who were in a marked RMP flagged them down. The RMP officers informed the anti-crime team that they were chasing a man who was on foot and had a gun. The officers did not give a description of the male and just lead the way to the door they saw him run into. PO Konoski and his team followed the RMP into the rear of the location and stopped in front of \$37(2)(6) The RMP officers said that they were 100% sure that the suspect ran into that exact location. All of the officers exited their vehicle and approached the rear door, which was closed. One of the officers used force to gain entry because the door was closed but PO Konoski could not recall if the door was locked and who entered first.

PO Konoski was the third officer to enter and once inside, he heard an officer shout, "Front door, front door!" PO Konoski never saw the suspect but saw that the front door was wide open. The officers then ran straight through the kitchen and living room and exited through the front door. PO Konoski did not recall if there were any civilians standing outside and does not recall which officers exited the location with him. PO Konoski did now know if any officer stopped to speak with someone inside the location but did notice 2-3 occupants inside, whom he did not interact with. PO Konoski did not have his gun drawn and could not recall if the other officers had their guns drawn. The officers were inside for five seconds and lost sight of the suspect once they went outside. PO Konoski checked the immediate area, within a 1-block radius but never ended up apprehending the suspect. PO Konoski did not recall seeing any civilians outside but did remember that a black female came outside and spoke with Sgt. Fabara. PO Konoski was not standing near them so he did not hear the interaction between them. PO Konoski stated that no one was frisked/searched or asked for ID. PO Konoski could not recall if other officers responded to location. No arrests were made and no summons issued.

Police Documents

Roll call (enc.19a-g)

The 101 Precinct tour 3 roll call indicated that Sgt. Fabara was the anti-crime supervisor and was assigned to vehicle# 532. PO Florio and PO Konoski were assigned to the anti-crime and were utilizing vehicle# 532. PO Rusielewicz and PO Cortes were assigned to a spike impact post.

Stop and Frisk Log (enc.20a-b)

The stop and frisk log did not have any entries for a stop that was conducted at §87(2)(b) or by the officers who were at the incident location.

Sprint (enc. 24b andc)

Two sprint requests were submitted to MAS and returned with negative results.

CCRB Histories

(enc. 4a)
To date, \$87(2)(b) has not filed any other CCRB complaints.

Sergeant Carlos Fabara (enc. 3a-b)

A review of Sgt. Fabara's CCRB history revealed that he has been a member of the force for 7 years and has 12 other complaints (5 of which are still pending). §87(4-b) § 87(2)(g)

Criminal Conviction Histories

A search in BADS utilizing a start date of January 1, 1998 produced one result for the last name §87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

search in BADS utilizing a start date of January 1, 2001 and the last name \$87(2) produced 5 hits for a first name \$87(2)(b) none that match \$87(2)(b) are state of birth or address.

Conclusions and Recommendations

Undisputed Facts	
It is not in dispute that officers entered \$87(2)(b) and as a result, damaged \$87(2)(b) s door.	
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Credibility Assessment § 87(2)(9)	
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§ 87(2)(g)	I
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Officers	
§ 87(2)(g)	
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Allegation A: Sergeant Carlos Fabara supervised the entry of \$87(2)(b)	
Allegation B: Sergeant Carlos Fabara damaged \$87(2)(b) s property. \$87(2)(b) complained that officers entered her apartment and as a result, damaged her back door.	
complained that officers entered her apartment and as a result, damaged her back door. 887(2)(9) The	
officers do not deny that they entered and their testimonies show that they entered her apartment while in	
process of trying to apprehend an armed perpetrator. According to PO Rusielewicz and PO Cortes, the suspect ran into \$87(2)(6) as a partment and they were 100% sure of the location. \$87(2)(9)	
suspect fair into subject the interest and they were 100% sure of the focusion.	I
Kamins outlines exigent circumstances to the warrant requirement during which an officer may	7
make a warrantless entry into a home (enc.1a) One of these factors is called "hot pursuit" and allows an	
officer to enter a premises, without a warrant, to search for a suspect who has fled after committing a crim (enc.2a). [887(2)(g)]	Э •
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alleged that the three plainclothes the contrary, §87(2)(b) did not s	r guns. med officers entered the apartment with their guns drawn. §87(2)(b) officers who ran straight through the apartment had their guns drawn. O ee any of the officers with their guns out. The officers that were le to confirm if they drew their guns §87(2)(9) It has been determined in
	policy of the Department is that an officer can draw his firearm and is he has a reasonable fear for his own or another's personal safety."
Allegation E: Sergeant Carlos Fa alleged that Sgt. Fa did not provide any contact inform	abara stopped and questioned unidentified males. abara frisked unidentified males. bara asked two males for their ID and then frisked them. \$87(2)(6) nation for either individual. None of the other witnesses alleged this and the this incident were unable to confirm this. Sgt. Fabara stated and did not question or frisk any individuals. \$87(2)(9)
Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: